

ID: CCA\_2009030310312442

Number: **200913058**

Release Date: 3/27/2009

Office:

UILC: 7425.05-00

---

**From:**

**Sent:** Tuesday, March 03, 2009 10:31:25 AM

**To:**

**Cc:**

**Subject:** FW: Redemption Case

Good morning: My answers are in red. As you can see, this advice has been reviewed.

I agree with your proposed answers.

I am working on a really involved redemption case and we have run into quite a few snags. Some of the issues that we have to figure out ASAP are as follows:

1. What do we actually do with a redemption check if the purchaser of the property refuses to accept it? I know we still have a valid redemption, but do we just hold on to it until they change their mind? Do we mail it to them by certified mail?

PLR 199906033 seems to answer this. The Service should deposit the funds into the District Director's fund--the fund is probably called something different, e.g. the area director's fund, since the reorg. The following language is from the PLR.

6. Is the successful evasion of the Service's diligent attempts to tender a redemption check the equivalent of a refusal to accept tender? Our research fails to disclose any case law involving redemption by the Service under section 7425 where a party, willing and able to do so, offers to pay another a sum of money and is told that it will not be accepted, the offer is a tender without the money being produced. The court stated that it had taken this same view in many previous cases. In Guthrie, the plaintiff's actions in attempting to redeem from the purchaser or his lawyer were frustrated. As just stated, Guthrie dealt with redemptions from distraint sales under section 6337 rather than redemptions from nonjudicial sales pursuant to section 7425. However, based upon the rationale set forth by the Tenth Circuit in Guthrie, we are of the opinion that with respect to section 7425 redemptions, the successful evasion of the Service's diligent attempts to tender a redemption check is tantamount to the refusal to accept tender with the result that redemption should be deemed to have been accomplished.

7. As you have indicated in your memorandum, IRM 535(26).2 permits the Service, in the event it is unable to accomplish tender of the redemption check, to deposit that check into the District Director's account. We believe the purpose behind this provision is to establish that there was an actual tender of the redemption funds. By documenting and segregating this money into a separate account and not returning it back into the revolving fund, evidence has been established of the fact that an attempt at redemption was made. We further believe that the placing of the check in the Director's safe would tend to accomplish the same result but caution that the date of

placement in the safe should also be documented. This date should be considered to be the date of redemption which date, in our opinion, causes additional interest to cease to accrue.

8. As we stated in our response to your sixth question, we believe that the successful evasion of the Service's diligent attempts to tender a redemption check is tantamount to the refusal to accept tender, the ultimate result being that redemption should be deemed to have been accomplished.

Turner v. Sanchez, 50 N. M. 15, 168 P. 2d 96 (1946).

2. Does the purchaser now have the ability (after we have already obtained the redemption funds and attempted to serve the redemption check on him, but before the redemption certificate is recorded) to pay us to release our right of redemption under Treas. Reg. 301.7425-4(c)(4) or any other theory? Under that reg, there is no time period stated for when they can request for a release. **It seems to us that the Service has a right to release its right of redemption up until the time of the filing of the certification of redemption. However, as per # 8 above "we believe that the successful evasion of the Service's diligent attempts to tender a redemption check is tantamount to the refusal to accept tender, the ultimate result being that redemption should be deemed to have been accomplished. Turner v. Sanchez, 50 N. M. 15, 168 P. 2d 96 (1946). . . . " Once the redemption is accomplished, the purchaser no longer has the right to request the Service to release its right to redemption.**

This was a redemption from a nonjudicial sale and the right to redeem expires March 5.

I appreciate any help you can provide.